

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRIAN FRIEDERICH-TIBBETTS,
Plaintiff,
v.
CAPTAIN MIKE LARSON, et al.,
Defendants.

CASE NO. C07-5209BHS

**ORDER DENYING
PLAINTIFF'S MOTION FOR
EXTENSION OF TIME, AND
ADOPTING REPORT AND
RECOMMENDATION**

This matter comes before the Court on U.S. Magistrate Judge J. Kelly Arnold's Report and Recommendation (Dkt. 50) and Plaintiff's Motion for an Extension of Time (Dkt. 55). The Court has considered the Report and Recommendation, the pleadings filed in support of and in opposition to the motion, and the remainder of the file and hereby adopts the Report and Recommendation and denies Plaintiff's motion for the reasons stated herein. Possessed

I. PROCEDURAL BACKGROUND

On September 19, 2007, Plaintiff filed a Civil Rights Complaint alleging violations of excessive force, inadequate medical care, restrictive shower provisions, and level of confinement. Dkt. 15. On May 7, 2008, Magistrate Judge J. Kelly Arnold issued a Report and Recommendation and recommended that Defendants' Motion for Summary Judgment (Dkt. 46) be granted and that Plaintiff's Complaint (Dkt. 15) be dismissed.

1 Dkt. 50. On June 3, 2008, Plaintiff filed a motion for an extension of time. Dkt. 52. The
2 Court granted that extension and renoted the Report and Recommendation for
3 consideration on the Court's August 8, 2008 calendar. Dkt. 53.

4 On July 28, 2008, Plaintiff filed another motion for an extension of time. Dkt. 54.
5 On August 5, 2008, Defendants responded. Dkt. 55.

6 II. DISCUSSION

7 A. Motion for an Extension of Time

8 Plaintiff requests an extension of time because (1) he needs time to prepare
9 Defendants' discovery requests and (2) he needs time to recover from surgery. Dkt. 54.
10 Plaintiff claims that he would not only like to file objections to the Report and
11 Recommendation but also file a response to Defendants' summary judgment motion. *Id.*

12 Plaintiff has had over three months to file objections to the Report and
13 Recommendation. In that time, Plaintiff has filed two motions for extensions of time and
14 a motion for an appointment of counsel. *See* Dkts. 52 and 54. Plaintiff has had ample
15 time to file objections and has also been able to file other pleadings for the Court to
16 consider. Plaintiff's request for an extension of time to file objections is denied.

17 Plaintiff failed to respond to Defendants' summary judgment motion and now
18 requests an extension to file a response. Dkt. 54. Defendants argue that Plaintiff has
19 failed to meet the requirements of Fed. R. Civ. P. 56(f) which governs continuances for a
20 party to obtain discovery in opposition to a summary judgment motion. Dkt. 55. Under
21 Rule 56(f), the party requesting the continuance must show by affidavit specific reasons
22 why it cannot present facts essential to justify its opposition. Plaintiff has failed to
23 advance any specific reason or what facts he hopes to obtain to justify his opposition.
24 Moreover, Judge Arnold recommended that Plaintiff's complaint be dismissed because he
25 has failed to exhaust his administrative remedies for two of his claims and because he
26 failed to state a constitutional cause of action on the other two claims. Dkt. 50. It is
27 unlikely that any additional facts will remedy either Plaintiff's procedural inadequacies or

1 Plaintiff's failure to state adequate legal claims. Therefore, Plaintiff's motion for an
2 extension of time to file a response is denied.

3 **B. Report and Recommendation**

4 Plaintiff alleged violations of excessive force, inadequate medical care, restrictive
5 shower provisions, and level of confinement. Dkt. 15. Defendants moved for summary
6 judgment on all four of these alleged violations. Dkt. 46. Judge Arnold recommended
7 dismissing the alleged violations of excessive force and inadequate medical care because
8 Plaintiff failed to exhaust his administrative remedies. Dkt. 50 at 4. Judge Arnold
9 recommended dismissing the alleged violations of level of confinement and frequency of
10 allowed showers because Plaintiff failed to state a claim of constitutional magnitude. *Id.*
11 at 5. Plaintiff has not filed objections to the Report and Recommendation. Even if
12 Plaintiff did file objections, it is doubtful that Plaintiff could show that Judge Arnold
13 made errors of law in his Report and Recommendation. Therefore, the Court adopts the
14 Report and Recommendation, grants Defendants' Motion for Summary Judgment, and
15 dismisses Plaintiff's complaint.

16 **III. ORDER**

17 Therefore, it is hereby

18 **ORDERED** that Plaintiff's Motion for an Extension of Time (Dkt. 55) is
19 **DENIED**; U.S. Magistrate Judge J. Kelly Arnold's Report and Recommendation (Dkt.
20 50) is **ADOPTED**; Defendants' Motion for Summary Judgment (Dkt. 46) is **GRANTED**;
21 and Plaintiff's Complaint (Dkt. 15) is **DISMISSED**.

22 DATED this 21st day of August, 2008.

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BENJAMIN H. SETTLE
United States District Judge